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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT  
OF MONTANA GREAT FALLS DIVISION

Gail Rutherford, natural mother, and  
Guardian for and on behalf of Alyssa  
Little, a minor child.

Plaintiff,

vs.

THE UNITED STATES OF  
AMERICA, Department of Human  
Health Services, through Indian Health  
Services, Stephen Wegner M.D., Teri  
Hensley M.D. and Paul Settler PAC, and  
John and Jane Does I-V as yet  
unidentified

Defendants.

Cause No.: 4:08-CV-044-SEH-RKS

COMPLAINT AND  
JURY DEMAND

**GENERAL ALLEGATIONS**

**I.**

Gail Rutherford, Guardian and Conservator arising from her appointment in  
Pondera County, Montana, brings this claim for and on behalf of her natural  
daughter, Alyssa Little, a minor child.

**II.**

The Indian Health Service is a political subdivision of the United States of  
America, and Defendant herein. Defendants, Stephen Wegner M.D., Teri Hensley  
M.D., Paul Settler PAC, John Doe and Jane Doe are employees of the Defendant

1 United States, or in the alternative, individuals who at all times pertinent, were  
2 engaged in acts or omissions in connection with their respective duties performed  
3 on behalf of the Defendant United States.

4 Many pertinent medical records are not sufficiently legible to indentify the  
5 individual medical United States employees or agents rendering negligent care to  
6 the Plaintiff Alyssa Little. Plaintiff anticipates amendment of the Complaint once  
7 these individuals are identified in discovery.  
8

### 9 III.

10 This Court has jurisdiction over the subject matter of this action pursuant to  
11 28 U.S.C. §1331 and the Federal Tort Claims Act. Five administrative claims  
12 were filed pursuant to statute seeking damages for the injuries described on June  
13 15, 2005, June 16, 2005, November 7<sup>th</sup>, 2005, November 22, 2005, and December  
14 16, 2005 and was acknowledged on June 8, 2007 and signed by a claims officer  
15 for the Public Health Service. The claims were denied by administrative action on  
16 February 28, 2008.  
17  
18

### 19 IV.

20 The Indian Health Service (IHS) maintains a health service facility at the  
21 Blackfeet Indian Reservation in Browning, Montana for the purpose of providing  
22 health care to residents thereof. Such facility also provides medical care services  
23 on site and by referral.  
24  
25

**V.**

The Plaintiff Little received services over the past years from the IHS at the Blackfeet Hospital in Browning, Montana.

**VI**

On February 7, 2006, the Plaintiff presented to the Defendant with abdominal pain. Dr. DeRosier examined the Plaintiff noting a seven month history of abdominal pain and a transverse vaginal septum, with bulging presentation. Dr. DeRosier diagnosed the Plaintiff as suffering from hematocolpos.

**VII.**

Plaintiff was transferred to Benefis Hospital in Great Falls, Montana whereupon she underwent emergency surgery to correct an imperforate hymen with transverse vaginal septum resulting with a largely dilated ovary and left Fallopian tube.

**COUNT I**

**VIII.**

On June 15, 2005, Plaintiff Little presented for examination for evaluation of abdominal pain, cramping with a history of vomiting. Examination was performed by the Defendant's Stephen Wegner M.D. Following the examination and evaluation Plaintiff received a diagnosis of gastritis.

**IX.**

Defendant Stephen Wegner M.D., upon information and belief, was either acting in his official capacity as an employee for the United States or, if not an employee then acting in connection with duties performed on behalf of the Defendant United States in rendering medical services to the Plaintiff Alyssa Little on June 15, 2005.

**X.**

In diagnosing gastritis, Defendant Wegner's diagnosis was incorrect as the Plaintiff suffered from the condition of hematocolpos.

**XI.**

The IHS and Defendant Stephen Wegner M.D. violated the standard of care in the following respects:

- A. Failure to take a complete history, including a menstrual history;
- B. Failure to diagnose her amenorrhea, which should have triggered a pelvic exam;
- C. Failure to do a pelvic exam;
- D. In the alternative, Failure to refer the Plaintiff to a specialist and;
- E. Failure to diagnose her medical condition of hematocolpos.

**XII.**

As a result of the violation of the standard of care by IHS and Defendant Stephen Wegner M.D. to provide appropriate medical services, the Plaintiff's

1 condition continued to be untreated resulting in, but not limited to intense pain for  
2 many months; increased chronic pelvic pain, decreased fertility, and endometriosis. As  
3 a further result of the Defendant's violations in the standard of care, the Plaintiff  
4 suffered damages in an amount to be determined at trial.

5  
6 **COUNT II**

7 **XIII.**

8 On June 16, 2005, Plaintiff Little presented for examination for evaluation of  
9 abdominal pain, cramping with a history of vomiting. Examination was  
10 performed by the Defendant's agents. Following the examination and evaluation  
11 Plaintiff received a diagnosis of mesenteric adenitis.

12  
13 **XIV.**

14  
15 Defendant John Doe M.D. or Jane Doe M.D., upon information and belief,  
16 was either acting in his or her official capacity as an employee or, if not an  
17 employee then acting in connection with duties performed on behalf of the  
18 Defendant United States in rendering medical services to the Plaintiff Alyssa  
19 Little on June 16, 2005.

20  
21 **XV.**

22  
23 In diagnosing mesenteric adenitis, the diagnosis was incorrect as the Plaintiff  
24 suffered from the condition of hematocolpos.

**XVI.**

The IHS and/or its agents violated the standard of care in the following respects:

- A. Failure to take a complete history, including a menstrual history;
- B. Failure to diagnose her amenorrhea, which should have triggered a pelvic exam;
- C. Failure to do a pelvic exam;
- D. in the alternative, Failure to refer the Plaintiff to a specialist
- E. Failure to obtain a pelvic ultrasound or pelvic CT/MRI exam and;
- F. Failure to diagnose her medical condition of hematocolpos for almost a 6-month period.

**XVII.**

As a result of the violation of the standard of care by IHS and/or its agents to provide appropriate medical services, the Plaintiff's condition continued to be untreated resulting in, but not limited to intense pain for many months; increased chronic pelvic pain, decreased fertility, and endometriosis. As a further result of the Defendant's violations in the standard of care, the Plaintiff suffered damages in an amount to be determined at trial.

**COUNT III**

**XVIII.**

On November 7, 2005, Plaintiff Little presented for examination for evaluation of abdominal pain, cramping with a history of vomiting. Examination

1 was performed by the Defendant Paul Settler PAC. Following the examination  
2 and evaluation Plaintiff received a diagnosis of mesenteric adenitis.

3  
4 **XIX.**

5 Defendant John Doe M.D. or Jane Doe M.D., upon information and belief,  
6 was charged with supervising Physician Assistant Paul Settler and was either  
7 acting in his or her official capacity as an employee or, if not an employee then  
8 acting in connection with duties performed on behalf of the Defendant United  
9 States in rendering medical services to the Plaintiff Alyssa Little on November  
10 7,2005.  
11  
12

13 **XX.**

14 Physician Assistant Paul Settler diagnosed the Plaintiff with viral gastro-  
15 enteritis. The diagnosis was incorrect as the Plaintiff suffered from the condition  
16 of hematocolpos.  
17

18 **XXI.**

19 The IHS and/or its agents violated the standard of care in the following  
20 respects:

- 21 A. Failure to take a complete history, including a menstrual history;  
22 B. Failure to diagnose her amenorrhea, which should have triggered a pelvic  
23 exam;  
24 C. Failure to do a pelvic exam;  
25 D. in the alternative, Failure to refer the Plaintiff to a specialist

1 E. failure to refer the Plaintiff to a medical doctor:

2 F. Failure to obtain a pelvic ultrasound or pelvic CT/MRI exam and;

3 G. Failure to diagnose her medical condition of hematocolpos .

4 **XXII.**

5 As a result of the violation of the standard of care by IHS and/or its agents  
6 to provide appropriate medical services, the Plaintiff's condition continued to be  
7 untreated resulting in, but not limited to intense pain for many months; increased  
8 chronic pelvic pain, decreased fertility, and endometriosis. As a further result of the  
9 Defendant's violations in the standard of care, the Plaintiff suffered damages in an  
10 amount to be determined at trial.  
11

12 **COUNT IV**

13 **XXIII.**

14  
15 November 22, 2005, the Plaintiff presented for examination for evaluation  
16 of symptoms of gastro-esophageal reflux disorder along well, complaining of  
17 abdominal problems and premenstrual tightness. Examination was performed by  
18 the Defendant Teri Hensley M.D. Following the examination and evaluation,  
19 Plaintiff received a diagnosis of abdominal pain and constipation.  
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21

22 **XXIV.**

23 Defendant Teri Hensley M.D. , upon information and belief, was  
24  
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1 either acting in her official capacity as an employee of the United States or, if not  
2 an employee then acting in connection with duties performed on behalf of the  
3 Defendant United States in rendering medical services to the Plaintiff Alyssa  
4 Little on November 22, 2005.

5  
6 **XXV.**

7 In diagnosing abdominal pain and constipation, IHS and / Defendant Teri  
8 Hensley M.D. were incorrect, as the plaintiff suffered from the condition of  
9 hematocolpos.

10  
11 The defendant violated the standard of care in the following respects:

- 12 A. Failure to take a complete history, including a menstrual history;  
13 B. Failure to diagnose her amenorrhea, which should have triggered a pelvic  
14 exam;  
15 C. Failure to do a pelvic exam;  
16 D. In the alternative, Failure to refer the Plaintiff to a specialist;  
17 E. Failure to get a pelvic ultrasound or pelvic CT/MRI exam and;  
18 F. Failure to diagnose her medical condition of hematocolpos.  
19  
20

21 **XXVI.**

22 As a result of the violation of the standard of care by IHS and Defendant  
23 Teri Hensley M.D. to provide appropriate medical services, the Plaintiff's condition  
24 continued to be untreated resulting in, but not limited to intense pain for many months;  
25

1 increased chronic pelvic pain/ and decreased fertility and endometriosis. As a result of  
2 the Defendant's violations in the standard of care, the Plaintiff suffered damages in  
3 an amount to be determined at trial.

4 **COUNT V**

5 **XXVII.**

6  
7 On December 16, 2005, the Plaintiff presented for evaluation of abdominal  
8 pain and cramping. Examination was performed by the Defendant's agents.  
9 Following the examination and evaluation Plaintiff received a diagnosis of  
10 chronic abdominal pain and constipation.  
11

12 **XXVIII.**

13  
14 Defendant John or Jane Doe, Physician upon information and belief, was  
15 either acting in his/her official capacity as an employee or, if not then an  
16 individual acting in connection with duties performed on behalf of the Defendant  
17 United States in rendering medical services to the Plaintiff Alyssa Little on  
18 December 16, 2005

19 **XXIX.**

20 In diagnosing chronic abdominal pain and constipation, the IHS and/or its  
21 agents were incorrect as the plaintiff suffered from the condition of  
22 hematocolpos.

23 The defendant violated the standard of care in the following respects:

24 A. Failure to take a complete history, including a menstrual history;  
25

- B. Failure to diagnose her amenorrhea, which should have triggered a pelvic exam;
- C. Failure to do a pelvic exam;
- D. In the alternative, Failure to refer the Plaintiff to a specialist;
- E. Failure to get a pelvic ultrasound or pelvic CT/MRI exam and;
- F. Failure to diagnose her medical condition of hematocolpos.

**XXX.**

As a result of the violation of the standard of care by IHS and/or its agents to provide appropriate medical services, the Plaintiff's condition continued to be untreated resulting in, but not limited to intense pain for many months; increased chronic pelvic pain, decreased fertility, and endometriosis. As a result of the Defendant's violations in the standard of care, the Plaintiff suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs request the following relief:

1. For judgment in her favor;
2. Special damages in an amount to be more specifically proven at trial
3. General damages in amount to be determined at trial;
4. For costs of suit allowed by law;
5. For any and all further and additional relief which may be appropriate.

**Plaintiff demands a jury trial.**

1 DATED this 2<sup>nd</sup> day of July 2008

2 O'BRIEN LAW OFFICE P.C.

3 /s/ JAMES P. O'BRIEN

4 Attorney for Plaintiff